SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 325

INGER JULIANE HANSEN, PETITIONER,

vs.

EDWARD L. HAFF, ACTING COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES OF ATTORNEYS.

STEPHEN M. WHITE, ESQ., 576 Sacramento St., San Francisco, Calif.

For Petitioner and Appellant.

UNITED STATES ATTORNEY, San Francisco, Calif.

For Respondent and Appellee.

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 20815-L.

In the Matter of

INGER JULIANE HANSEN,

on Habeas Corpus;

U. S. Department of Labor
Warrant Proceedings No. 55762/874.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable, the Southern Division of the United States District Court, for the Northern District of California:

The petition of Inger Juliane Hansen respectfully shows:

I.

That she is a native and a citizen of Denmark.

II.

That she first entered the United States in September, 1922, and her admission as a permanent

resident of the United States, as of the date of her said entry, has been confirmed by the United States Department of Labor, as evidenced by the records of that Department, the Bureau of Immigration thereof, file No. 55483/28.

III.

That she has resided and remained continuously in the United States ever since her entry in September, 1922, save for the following trips abroad: departed from the United States in 1926 and returned thereto in May, 1928; departed from the United States in May, 1931, and returned thereto on September 6, 1931; that, upon the occasion of her departure on each of said trips, she was in possession of and the lawful holder of a permit to re-enter the United [1]* States issued by the Commissioner General of Immigration under the provisions of Section 10 of the Immigration Act of 1924 (8 U. S. C. A. Sec. 210); that, upon the occasion of her return to the United States on each of said trips, she was admitted to the United States by the United States Immigration authorities for permanent residence.

IV.

That on the 6th day of September, 1931, she was taken into custody by the United States Immigration authorities for the Port of Seattle, Washington, without a warrant having been issued for her arrest

*Page numbering appearing at the foot of page of original certified Transcript of Record.

by the Secretary of Labor and that, thereafter, to wit: on the 9th day of September, 1931, the Secretary of Labor issued a warrant for her arrest on the ground that her entry into the United States on September 6, 1931, was an entry in violation of the Immigration Act of 1917 (39 Stat. L. 874), in that she entered the United States for an immoral purpose.

V.

That she was accorded a hearing before the Immigration authorities for the Port of Seattle, Washington, on the charge contained in the aforementioned warrant of arrest and, as a result of the evidence adduced at said hearing, the Secretary of Labor found that the evidence sustained the charge and that he, thereupon, issued a warrant for the deportation of your petitioner to Denmark and directed that she be surrendered into the custody of the Commissioner of Immigration for the Port of San Francisco, California, for the purpose of effectuating the warrant of deportation.

VI.

That she is now in the custody of John D. Nagle, as Commissioner of Immigration for the Port of San Francisco, California, and the said John D. Nagle, acting under the orders of the Secretary of Labor, has given notice of his intention to deport your petitioner [2] away from and out of the United States to Denmark and, unless this Court intervenes, she will be so deported.

VII.

That, as your petitioner is advised and believes, the Secretary of Labor, in ordering the deportation of your petitioner and the said John D. Nagle, in holding her in custody so that her deportation may be effected, are acting in excess of the power and authority committed to them by the statutes in such cases made and provided for and are unlawfully imprisoning, confining and restraining her of her liberty in the following particulars, to wit:

1. That the charge that your petitioner entered the United States for an immoral purpose on September 6, 1931 and that she is, therefore, subject to deportation, is based upon Section 3 of the Immigration Act of February 5, 1917 (8 U. S. C. A. Sec. 133) providing as follows:

> "That the following classes of aliens shall be excluded from admission into the United States; * * * persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *."

And, upon Section 19 of the same Act, providing as follows:

> "That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported; * * *."

That it is claimed by the Secretary of Labor that following your petitioner's entry into the United States in September, 1922, and beginning in about the year 1924, that your petitioner had adulterous relations with a person in the United States and that these relations continued up until and including the 6th day of September, 1931, and that upon said date, when your petitioner entered the United States, it was the intention of your petitioner to resume these relations in the United States; that your petitioner alleges [3] that the evidence adduced before the immigration authorities establishes that she was legally and permanently admitted to the United States in September, 1922, that ever since said date the United States has been her permanent and only place of abode, that ever since said date she has been employed as a domestic in the United States, save for such intervals when she was absent from the United States on temporary visits abroad, as hereinbefore alleged, that when she departed from the United States in May, 1931, it was her sole purpose to make a temporary visit to her parents in Denmark and, at the conclusion of her said visit, to return to the United States to continue her residence therein and to resume her occupation as a domestic therein, that, with the sole purpose and intention of returning to the United States to continue her residence therein and to resume her occupation as a domestic therein, she entered the United States on September 6, 1931, and

that any intention that she may have had to enter the United States on the said date for the purpose of having adulterous relations with a person in the United States was wholly incidental and immaterial to her purpose in returning to the United States to resume her residence therein and to resume her occupation as a domestic therein; that the Secretary of Labor, in holding and deciding that your petitioner entered the United States on September 6, 1931, for an immoral purpose has not been guided by the evidence, that his decision is not supported by any substantial evidence and he has thereby acted arbitrarily and unfairly and has denied your petitioner the full and fair hearing to which she was and is entitled.

2. That your petitioner alleges, as she is advised and believes, that Section 3 of the Immigration Act of February 5, 1917, supra, providing for the exclusion of those certain classes of aliens therein specified, has reference only to an original entry and that said section does not contemplate within its meaning the exclusion [4] from the United States of any alien, who may fall within any of the excluded classes as specified in said Section 3, where such alien has been legally and permanently admitted to the United States and is returning thereto from a temporary visit abroad; that your petitioner alleges, as she is advised and believes, that having been legally and permanently admitted to the United States in September, 1922, and having returned to the United States on September 6, 1931,

from a temporary visit abroad, she was not and could not be excluded from admission to the United States on September 6, 1931, on the ground that she was entering the United States for an immoral purpose.

3. That your petitioner alleges, as she is advised and believes, that adultery does not involve moral turpitude and that Section 3 of the Immigration Act of 1917, supra, providing for the exclusion from the United States of aliens entering for an immoral purpose, contemplates within its meaning only those acts of immorality which constitute moral turpitude; that your petitioner alleges, as she is advised and believes, that the Secretary of Labor has acted arbitrarily and unfairly and has misinterpreted the statutes in such cases made and provided for in holding and deciding that your petitioner entered the United States for an immoral purpose by reason of her alleged entry for the purpose of having adulterous relations with a person in the United States.

VIII.

That your petitioner has filed herewith, as Exhibit "A," a copy of the record and proceedings had before the immigration authorities and hereby adopts and makes the said exhibit a part of this petition.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein, directed to John D. Nagle, as Commissioner of Immig- [5] ration for

the Port of San Francisco, directing him to hold the body of your petitioner before this Court at a time and place to be specified, together with the time and cause of her detention so that the same may be inquired into to the end that the petitioner may be restored to her liberty and go hence without day and that pending the proceedings herein and until further order of this Court and that she be released on bond in the amount of One Thousand ($1,000.00) Dollars pending the proceedings herein and until further order of this Court, the bond in the amount of One Thousand ($1,000.00) Dollars being equivalent to the amount of bond which was required of your petitioner for her release pending the proceedings before the immigration authorities.

Dated this 30th day of December, 1931.

INGER JULIANE HANSEN,
Petitioner.

STEPHEN M. WHITE,
Attorney for Petitioner. [6]

United States of America,
State of California,
City and County of San Francisco.—ss.

Inger Juliane Hansen, being first duly sworn, deposes and says:

That she is the petitioner named in the foregoing petition; that she has read the foregoing petition and knows the contents thereof; that the same is true of her own knowledge except as to those mat-

ters which are therein stated on her information and belief, and as to those matters she believes it to be true.

INGER JULIANE HANSEN.

Subscribed and sworn to before me this 30th day of December, 1931.

[Seal] STEPHEN M. WHITE,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 30, 1931. Walter B. Maling, Clerk. [7]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Good cause appearing therefor, and upon reading the verified petition on file herein;

IT IS HEREBY ORDERED, that John D. Nagle, Commission of Immigration for the Port of San Francisco, appear before this Court on the 25th day of January, 1932, at the hour of 10 o'clock A. M. of said day, to show cause, if any he have, why a writ of habeas corpus should not be issued as prayed for, and that a copy of this order be served upon the said Commissioner;

AND IT IS FURTHER ORDERED, that Inger Juliane Hansen, the petitioner herein, be not removed from the jurisdiction of this Court and that she be enlarged on bond in the sum of One Thou-

sand ($1,000.00) Dollars pending this hearing and until further orders herein.

Dated at San Francisco, California, December 30, 1931.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Dec. 30, 1931. Walter B. Maling, Clerk. [8]

[Title of Court and Cause.]

NOTICE OF FILING OF FINDINGS AND DECISION OF SECRETARY OF LABOR.

To John D. Nagle, as Commissioner of Immigration for the Port of San Francisco, respondent herein, and to George J. Hatfield, United States Attorney, his attorney:

You and each of you will please take notice that the petitioner herein files herewith under Exhibit "B," as part and parcel of his petition for a writ of habeas corpus and with the same force and effect as if set forth in full in said petition, a copy of the findings and decision of the Secretary of Labor, through his Board of Review, ordering the deportation of the petitioner.

Dated this 22nd day of April, 1932.

STEPHEN M. WHITE,
Attorney for Petitioner. [9]

EXHIBIT "B"

FINDINGS AND DECISION OF SECRETARY OF LABOR.

"55762/874—Seattle November 14, 1931.

In re: Inger Juliana Hansen, 33, alias Mrs. A. W. Bolinger.

This case comes before the Board of Review in warrant proceedings.

Board: Messrs. Winnings, Brown, Ludwig, O'Brien and Hurley.

Attorney Roger O'Donnell, heard November 12, 1931.

Attorney Fred H. Lysons, at the port, interested.

The record in this case concerns a 33 year old single female, native and citizen of Denmark, domestic servant and cook by occupation, who first arrived in the United States at the port of Seattle, Washington, via Vancouver, B. C., on September 19, 1922, at which time she was recorded as a temporary visitor. She remained in the United States continuously from September, 1922, to March, 1926, when she was made the subject of deportation proceedings. The old file is not available, but it appears from the record that the warrant of arrest which was issued at that time was cancelled and the alien's admission to the United States made permanent.

Hearing was accorded to the alien at Seattle, Washington, on September 17, 1931, by Inspector John P. Boyd, Jr. The alien is at large on bond.

Nearest relatives abroad. Father and mother: Mr. and Mrs. Anders Hansen, Stege, Prasto, Amt. Denmark. [10]

Sometime subsequent to March, 1926, and after the conclusion of deportation proceedings, the alien voluntarily left this country in 1926 for Denmark. She next arrived in this country at the port of New York in May, 1928, at which time she was admitted as a returning resident upon presentation of a re-entry permit. Since her first arrival in 1922, she has made her home in or near Los Angeles, California. At the preliminary hearing she testified that in 1924, she became acquainted with a Mr. A. W. Bolinger, a married man and a native born American citizen. She further testified that she began to have sexual relations with Bolinger in Los Angeles, California, in 1925, but that she was employed at the time and she and Bolinger did not live together. It is apparent that she has continued her immoral relations with Bolinger since 1924, and admits that he has from time to time given her money, approximately $500.00 all together, and clothing.

In May, 1931, accompanied by Bolinger, she left Los Angeles for a trip to Europe, via New York, travelling from Los Angeles to New York with Bolinger as man and wife. She claims that she purchased from her own funds a roundtrip ticket from Los Angeles to New York, but that Bolinger paid most of the cost of the ocean voyage from New York to Europe and return and her expenses in

Europe. She further admits that she and Bolinger maintained the relationship of man and wife part of the time in Europe but not all of the time.

In August 27, 1931, the alien, accompanied by Bolinger, arrived as a passenger on the SS "Duchess of Richmond," at Montreal, [11] Canada. Still in the company of Bolinger she arrived on the SS "Princess Marguerite" at Seattle, Washington, on September 6, 1931, at which time she was admitted as a returning resident. It is shown by the record that Bolinger paid her fare from Vancouver to Seattle and she admits that when they left Vancouver it was her intention to continue the relationship of man and wife with Bolinger until they arrived in Los Angeles, but denies that it was her intention to continue such relationship after arrival in Los Angeles.

Upon arrival at Seattle on September 6, 1931, she went to the Olympic Hotel, where she was registered with Bolinger as man and wife under the name of Mr. and Mrs. Hansen, and at the time of her arrest by the immigration authorities was occupying the same room in this hotel with Bolinger.

The following is quoted from a report made by Immigrant Inspector J. P. Sanderson, under date of September 8, 1931, which report was introduced into evidence and made a part of the record over objection by the alien's attorney:

> "Mr. Bolinger stated that he is a citizen of the United States born in the State of Ohio, 58 years of age, banker, residing at Long Beach,

Calif.; that he is married and lived with his wife up to the time he departed for Europe; that he has two sons who have been admitted to practice law in California; that he left the United States May 23, 1931, via New York and visited Holland, Belgium, England and other countries and was a delegate to the International Rotary Club Convention at Vienna; that he returned to this continent on the SS "Duchess of Richmond," arrived at Montreal a few days ago and proceeded by the C. P. Ry. to Vancouver, B. C., thence by boat to Seattle. [12]

He further states that he first met Miss Hansen in 1923 at Los Angeles; that they had planned the trip to Europe, but being apprehensive of the Mann Act, Miss Hansen drew money from her own bank account and by check paid for her own transportation from California to New York and from Montreal to California; that they traveled in the same compartment from California to New York, but did not occupy the same stateroom from New York to Europe or from Europe to Montreal to Vancouver; that he reserved a stateroom from Vancouver to Seattle, but it was used merely for the purpose of keeping their bagbage.

Mr. Bolinger states that he bought various clothes for Miss Hansen and paid her ocean transportation both ways and paid other inci-

dental expenses. Mr. Bolinger further states that his wife has been in poor health for five years and that it has been his intention for some time to divorce his wife and marry Miss Hansen. He also states that they lived together as man and wife most of the time that they were in Europe."

At the formal hearing, Inspector Sanderson was called as a witness in order that the alien's attorney might have an opportunity for cross-examination. The attorney as shown by the record declined to cross-examine this witness for the government.

In so far as is disclosed by the record, Mr. Bolinger was available as a witness to either affirm or deny the statements alleged to have been made by him as indicated in the report of Inspector Sanderson. His presence was not demanded by the attorney nor was he called as a witness by the attorney.

In the brief submitted by the attorney in this case, it is stated that Mr. Bolinger "was also arrested." There is nothing in the evidence to support this statement. Objection is also made in the attorney's brief to the letter or report of Inspector Sanderson [13] which was introduced into evidence over the objection of the alien's attorney.

"In administrative hearings, ex parte affidavits can be received and considered as evidence, particularly if no objection is made to their reception, and providing administrative officials are willing to entertain cross-examina-

tion and rebutting proof." Mita v. Bonham, C. C. A. 9th, Circuit, 25 Fed. (2d) 11.

"Where alien was represented by counsel at subsequent hearings before immigration officials, who cross-examined witnesses appearing against her, and was permitted, together with attorney, to inspect warrant of arrest and evidence on which it was based, the fact that she was not represented by counsel at the preliminary hearing held not to constitute a violation of Immigration Rules July 1, 1925, rule 18, subd. d, par. 2." Plane v. Carr, C. C. A. 9th., Circuit, 19 Fed. (2d) 470.

The attorney in his brief cites the case of U. S. v. Bitty, 208 U. S. 393, and stresses the point that the subject of these proceedings is not a "concubine" and the Bitty case is, therefore, no authority for any such proceeding as has been instituted here.

The word "concubinage" is defined by Webster as follows: "The cohabiting of a man and woman who are not legally married," and the following is given by the same authority for the word "concubine": "A woman who cohabits with a man without being his wife; a kept mistress; a woman who lives in concubinage with a man."

The case of U. S. v. Bitty, was a criminal prosecution under the old Immigration Act of 1907, Bitty being prosecuted under that act for bringing a woman to the United States for an immoral purpose. Though penal laws are to be construed

strictly, the Court [14] in the Bitty case held: "We must assume that in using the words 'or for any other immoral purpose,' Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of such intercourse." And further, "The statute in question, it must be remembered, was intended to keep out of this country immigrants whose permanent residence here would not be desirable or for the common good, and we cannot suppose either that Congress intended to exempt from the operation of the statute the importation of an alien woman brought here only that she might live in a state of concubinage with the man importing her, or that it did not regard such an importation as being for an immoral purpose."

The case of Hunter v. U. S. (45 Fed. (2d) 55) was a criminal prosecution under the Mann Act, and the facts in that case are totally dissimilar to the facts in the instant case.

Here we have an alien woman who has been on her own admission living in concubinage (as defined by Webster) with Bolinger almost continuously since 1924. Bolinger paid her passage from Europe to the United States. She is an alien, and although previously a resident of this country, upon her return she was subject to all the provisions of the Immigration Rules to the same extent as she would have been if she had never resided in this country. The Board is of the opinion that at the

time of her last entry, it is clearly established she entered for an immoral purpose. [15]

The charge contained in the warrant has been sustained.

Considered and ordered that the alien be deported to Denmark at S. S. expense on the following ground:

That she is in the United States in violation of the Act of February 5th, 1917, in

That she entered the United States for an immoral purpose.

W. W. HUSBAND,
Second Assistant Secretary."

Service and receipt of copy of the within *Notice,* etc., and Exhibit "B" is hereby admitted this 22d day of April, 1932.

GEO. J. HATFIELD,
Attorney for .....

[Endorsed]: Filed Apr. 22, 1932. Walter B. Maling, Clerk. [16]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 21st day of March, in the year of our Lord one thousand nine hundred and thirty-two.

Present: the Honorable HAROLD LOUDERBACK, District Judge.

[Title of Cause.]

ORDER SUBMITTING MATTER ON BRIEFS.

This matter came on regularly for hearing on order to show cause as to issuance of writ of habeas corpus. On motion of C. M. Carpenter, Esq., Asst. U. S. Atty., ordered petitioner have 10 days to file reply brief. [17]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 6th day of May, in the year of our Lord one thousand nine hundred and thirty-two.

Present: the Honorable HAROLD LOUDERBACK, District Judge.

[Title of Cause.]

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS.

The petition for writ of habeas corpus, having been heretofore submitted, and due consideration having been thereon had, it is ordered that said petition be and the same is hereby denied, and that the petitioner, Inger Juliane Hansen, be remanded to the custody of the respondent. [18]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the above-entitled Court, to John D. Nagle, Commissioner of Immigration, and to George J. Hatfield, Esq., United States Attorney, his Attorney:

You and each of you will please take notice that Inger Julian Hansen, the petitioner and appellant

in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered herein on May 6th, 1932, denying the petition for a writ of habeas corpus filed herein.

Dated this 27th day of May, 1932.

STEPHEN M. WHITE,
Attorney for Petitioner. [19]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Inger Julian Hansen, the petitioner and appellant in the above-entitled matter, and respectfully shows:

That on the 6th day of May, 1932, the above-entitled Court made and entered its order denying the petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

Wherefore the appellant prays that an appeal may be granted in her behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, for the correction of the errors as complained of, and further, that a transcript of the

record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof, and further, that the said appellant be held within the jurisdiction of this Court during the pendency of the appeal herein, so that she may be produced in execution of whatever judgment may be finally entered herein.

Dated at San Francisco, California, May 27, 1932.

STEPHEN M. WHITE,
Attorney for Appellant. [20]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes the appellant, Inger Julian Hansen, through her attorney, Stephen M. White, Esq., and sets forth the errors she claims the above-entitled Court committed in denying her petition for a writ of habeas corpus, as follows:

I.

That the Court erred in not granting the writ of habeas corpus and discharging the appellant from the custody and control of John D. Nagle, Commissioner of Immigration at the Port of San Francisco.

II.

That the Court erred in not holding that it had jurisdiction to issue the writ of habeas corpus as prayed for in the petition on file herein.

III.

That the Court erred in not holding that the allegations set forth in the petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus. [21]

IV.

That the Court erred in not holding that there was no substantial evidence before the Secretary of Labor to warrant his conclusion that the appellant entered the United States for an immoral purpose.

V.

That the Court erred in not holding that there was no substantial evidence before the Secretary of Labor to warrant his conclusion that the appellant entered the United States for the purpose of concubinage.

VI.

That the Court erred in not holding that the Secretary of Labor acted arbitrarily and unfairly in finding that the appellant entered the United States for the purposes of concubinage and/or for an immoral purpose.

VII.

That the Court erred in not holding that the evidence before the Secretary of Labor established that the petitioner entered the United States for the purpose of resuming her residence therein to pursue a lawful occupation.

VIII.

That the Court erred in not holding that the Secretary of Labor acted arbitrarily and unfairly in not finding that the appellant entered the United States for the purpose of resuming her residence therein to pursue a lawful occupation.

IX.

That the Court erred in not holding that Section 3 of the Immigration Act of February 5, 1917, has reference only to aliens who are entering the United States for the first time and that the said statute does not contemplate the exclusion from the United States of an alien, who has been legally and permanently admitted [22] to the United States and who is returning thereto from a temporary visit abroad.

X.

That the Court erred in not holding that the Secretary of Labor was without power and/or jurisdiction to order the deportation of the appellant.

XI.

That the Court erred in denying the petition for a writ of habeas corpus.

WHEREFORE, appellant prays that the said order and judgment of the United States District Court for the Northern District of California made, given and entered herein in the office of the Clerk of said Court on the 6th day of May, 1932, denying the petition for a writ of habeas corpus, be reversed and that she restored to her liberty and go hence without day.

Dated at San Francisco, California, this 27th day of May, 1932.

STEPHEN M. WHITE,
Attorney for Appellant.

[Endorsed]: Filed May 27, 1932. Walter B. Maling, Clerk. [23]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appearing to the above-entitled Court that Inger Julian Hansen, the petitioner and appellant herein, has this day filed and presented to the above Court her petition praying for an order of this Court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of this Court denying a writ of habeas corpus herein and dismissing her

petition for said writ, and good cause appearing therefor,

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled Court make and prepare a transcript of all the papers, proceedings and records in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER HEREBY ORDERED that the execution of the warrant of deportation for the said Inger Julian Hansen be and the same is hereby stayed pending this appeal and that she remain at liberty under bond in the amount of One Thousand ($1,000.00) Dollars, pending this appeal and until further orders herein.

Dated this 27th day of May, 1932.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed May 27, 1932. Walter B. Maling, Clerk. [24]

[Title of Court and Cause.]

ORDER TRANSMITTING ORIGINAL EXHIBITS.

Good cause appearing therefor, IT IS HEREBY ORDERED that the Immigration Records filed as exhibits herein, may be transmitted by the Clerk of the above-entitled Court to and filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit to be taken as part of the record on appeal in the above-entitled cause with the same force and effect as if embodied in the transcript of record and so certified by the Clerk of this Court.

Dated this 27th day of May, 1932.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed May 27, 1932. Walter B. Maling, Clerk. [25]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL.

To the Clerk of said Court:

Sir:

Please issue copies of the following papers for transcript on appeal:

1. Petition for writ of habeas corpus.
2. Order to show cause.

3-a. Notice of filing of Findings and decision of Secretary of Labor.

3. Findings and decision of Secretary of Labor—Petitioner's exhibit "B."

4. Minute order re introduction of Immigration Records.

5. Minute order denying petition for writ of habeas corpus.

6. Notice of appeal.

7. Petition for appeal.

8. Assignment of errors.

9. Order allowing appeal.

10. Order transmitting original immigration records.

11. Citation on appeal.

12. Praecipe.

STEPHEN M. WHITE,
Attorney for Appellant.

[Endorsed]: Filed Aug. 2, 1932. Walter B. Maling, Clerk. [26]

[Title of Court and Court.]

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 26 pages, numbered from 1 to 26, inclusive, contain a

full, true, and correct transcript of the records and proceedings in the Matter of Inger Juliane Hansen, on Habeas Corpus, No. 20815-L, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Ten Dollars ($10.00) and that the said amount has been paid to me by the Attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 5th day of August, A. D. 1932.

[Seal] WALTER B. MALING,
Clerk.
By C. W. TAYLOR,
Deputy Clerk. [27]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America.—ss.

The President of the United States, to John D. Nagle, Commissioner of Immigration, Port of San Francisco, and George J. Hatfield, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within

30 days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein Inger Julian Hansen is appellant and you are appellee, to show cause, if any there be why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the part in that behalf.

Dated at San Francisco, California, May 27th, 1932.

HAROLD LOUDERBACK,
United States District Judge.

[Endorsed]: Filed May 27, 1932. Walter B. Maling, Clerk. [28]

[Endorsed]: No. 6921. United States Circuit Court of Appeals for the Ninth Circuit. Inger Julian Hansen, Appellant vs. John D. Nagle, Commissioner of Immigration for the Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division. Filed August 6, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6921

United States

Circuit Court of Appeals

For the Ninth Circuit.

INGER JULIANE HANSEN,

Appellant,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,

Appellee.

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated Term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the twentieth day of December in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable JULIAN W. MACK, Circuit Judge.

No. 6921

INGER JULIANE HANSEN,

Appellant,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,

Appellee.

ORDER OF SUBMISSION

Pursuant to stipulation of counsel for the respective parties, ORDERED appeal in above cause submitted to the court for consideration and decision on briefs on file.

[Title of Court and Cause.]

MOTION FOR SUBSTITUTION OF APPELLEE; CONSENT TO GRANTING OF MOTION; ORDER GRANTING MOTION.

Comes, now, Inger Juliane Hansen, the appellant in the above entitled cause, through her attorney, Stephen M. White, Esq., and respectfully shows the court:

That an appeal in the above entitled cause is now pending before this Court and that said appeal was submitted to this Court for decision on December 20, 1932;

That John D. Nagle as Commissioner of Immigration for the Port of San Francisco was named in said cause as appellee; that said John D. Nagle died on December 30, 1932; that Edward L. Haff ever since the death of said John D. Nagle, has been and is now the acting United States Commissioner of Immigration for the Port of San Francisco;

It is further shown to this court that there is substantial need for continuing and maintaining this cause, in that the right of the appellant to be released and discharged from the custody and control of the United States Immigration authorities and to be and remain in the United States, as against the right of the United States to detain and deport her from the United States, as will fully appear from the records on file herein, cannot be successfully maintained or adjudicated unless said Edward L. Haff, as acting Commissioner of Immigration for the Port of

San Francisco, is substituted as appellee herein for John D. Nagle, as Commissioner of Immigration for the Port of San Francisco.

WHEREFORE, it is prayed that Edward L. Haff as acting Commissioner of Immigration for the Port of San Francisco, be substituted in said cause for John D. Nagle, as Commissioner of Immigration for the Port of San Francisco.

Dated at San Francisco, California, this 18th day of January, 1933.

STEPHEN M. WHITE,
Attorney for Appellant.

State of California
City and County of San Francisco—ss.

Stephen M. White, being duly sworn, deposes and says:

That he is the attorney of record for Inger Juliane Hansen, the appellant in the within entitled cause, and, as such, is authorized to verify this motion; that he has read the foregoing motion and is familiar with the statements therein contained, and that the facts therein stated are true, except such facts as may be stated upon information and belief, and, as to those facts, he believes it to be true.

STEPHEN M. WHITE

Subscribed and sworn to before me this 18th day of January, 1933.

[Seal] JOSEPH PENSA
Notary Public in and for the City and County of San Francisco, State of California.

CONSENT TO GRANTING OF MOTION

Consent is hereby given to the granting of the foregoing motion for the substitution, as appellee, of Edward L. Haff, as acting Commissioner of Immigration for the Port of San Francisco, for John D. Nagle, as Commissioner of Immigration for the Port of San Francisco.

Dated at San Francisco, California, this 24th day of January, 1933.

I. M. PECKHAM
United States Attorney
Attorney for Edward L. Haff,
as acting United States
Commissioner of Immigration
for the Port of San Francisco.

ORDER GRANTING MOTION FOR SUBSTITUTION.

Upon reading the foregoing motion and good cause appearing therefor:

IT IS HEREBY ORDERED that the said motion be granted and that Edward L. Haff, as acting Commissioner of Immigration for the Port of San Francisco, be substituted, as appellee, in said cause, for John D. Nagle, as Commissioner of Immigration for the Port of San Francisco.

Dated this 25th day of January, 1933.

CURTIS D. WILBUR
U. S. Circuit Judge.

[Endorsed]: Filed Jan 25, 1933. Paul P. O'Brien, Clerk.

At a stated Term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the eighth day of May in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable JULIAN W. MACK, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND DISSENTING OPINION AND FILING AND RECORDING OF DECREE.

By direction of the court, ORDERED that the opinion and dissenting opinion this day rendered by this court in above cause be forthwith filed by the clerk and that a decree be filed and recorded in the minutes of this court in accordance with the majority opinion filed.

[Title of Court and Cause.]

OPINION

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Before: WILBUR, SAWTELLE and MACK, Circuit Judges.

SAWTELLE, Circuit Judge:

This is an appeal from an order denying a petition

for a writ of habeas corpus. Appellant is a citizen of Denmark, and has been ordered deported from the United States on the ground that she entered for an immoral purpose, contrary to the provisions of the Immigration Act of February 5, 1917 (8 U. S. C. A., §136), which provides that aliens who enter the United States for the purpose of prostitution, or for any other immoral purpose, shall be excluded.

Appellant first came to the United States in 1922 and made her home in Los Angeles, California, where she was employed as a domestic servant. It appears from the record that in 1924 she became acquainted with one Bolinger, a married man, in Los Angeles, and in 1925 she commenced to have illicit relations with him. In 1926 she made a trip to Denmark, returning here in 1928. In May, 1931, she made another trip to Europe, on which she was accompanied by Bolinger. On this trip they continued their illicit relations and traveled together, for at least a part of the time, as husband and wife. They returned here together on September 6, 1931, and entered at the port of Seattle, Washington, where they registered at a hotel as husband and wife.

At a preliminary hearing before immigration inspectors the following morning, appellant admitted her previous illicit relations with Bolinger, in Los Angeles and on the trip to Europe, and that she intended to continue such relations with him until they reached Los Angeles, but that thereafter she did not intend to see him,—"I might see him, but that is all." Bolinger also admitted their illicit relationship on the trip to Europe. Appellant denied all of these admissions at a subsequent hearing.

However, it is not within our province to weigh the evidence. "The duty to do that is with the immigration officials and the Secretary of Labor, and the responsibility rests solely upon them, their decision being final if there is any evidence whatever to support it." United States ex rel Bauder v. Uhl (C. C. A. 2), 211 F. 628, 633. See, also Low Wah Suey v. Backus, 225 U. S. 460, 468. The evidence clearly establishes that appellant entered the United States for an immoral purpose. Upon her entry at Seattle, appellant and Bolinger immediately registered at a hotel as husband and wife, and had traveled as such on their trip to and from Europe. Under all the circumstances, it might well have been found that she intended to continue her illicit relations with Bolinger after their return to Los Angeles, as well as during their journey thither.

Appellant vigorously contends that she is not a concubine, because unlawful cohabitation, as distinguished from clandestine and sporadic intercourse, is essential to create the status of a concubine. However that may be, "We must assume that in using the words 'or for any other immoral purposes,' Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of such intercourse. These views may not be overlooked in determining questions involving the morality or immorality of sexual intercourse between particular persons." United States v. Bitty, 208 U. S. 393. Whether or not appellant may be considered as a concubine,

therefore, is immaterial. By her own admissions, at the time she entered the United States she did so for an immoral purpose: to continue her illicit relations with Bolinger, at least for a limited period.

Appellant is not entitled to remain here solely by force of the reentry permit issued to her and because of her previous residence. The act provides that "At any time within five years after entry any alien who at the time of entry was a member of one or more of the classes excluded by law * * * shall, upon warrant of the Secretary of Labor, be taken into custody and deported." 8 U. S. C. A. §155. The ban of the immigration laws attaches irrespective of previous residence or domicile in this country. Lapina v. Williams, 232 U. S. 78; Lewis v. Frick, 233 U. S. 291.

Affirmed.

MACK, Circuit Judge (dissenting):

Appellant is ordered to be deported as an alien excluded by law. Act of Feb. 5, 1917, c. 29, §19, 39 Stat. 889, 8 U. S. C. A., §155. I cannot concur in the contention that she entered this country for an "immoral purpose" within the meaning of Section 3 of the Act of Feb. 5, 1917 (39 Stat. 875; 8 U. S. C. A., §136 (g)), which excluded "prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose * * *."

1. On this record appellant could not be found to have been or to have intended to be a concubine

or mistress, even though it could be found therefrom that in returning from abroad to her residence in Los Angeles, she intended to have sexual relations with her companion until their arrival and even occasionally thereafter.

The question for determination is whether or not such extra-marital relations, despite the social and moral opprobrium that attaches thereto, are included within the phrase "any other immoral purpose," as used in this statute. Clearly here as in United States v. Bitty, 208 U. S. 393 (1908), where a similar phrase in the Immigration Act of 1907 was construed,

> "in accordance with the familiar rule of ejusdem generis, the immoral purpose referred to by the words 'any other immoral purpose,' must be one of the same general class or kind as the particular purpose of 'prostitution' specified in the same clause of the statute." (p. 402.)

The District (155 F. 938) and the Supreme Courts were agreed in that case that the rule of ejusdem generis was applicable; the difference between them was whether or not a concubine was ejusdem generis with a prostitute. As to this, the Supreme Court, reversing the District Court, said:

> "The prostitute may, in the popular sense, be more degraded in character than the concubine, but the latter none the less must be held to lead an immoral life * * *."

That case, however, does not justify a holding that appellant falls within the rule; on the contrary,

while the concubine and the mistress are comparable to the prostitute, common understanding draws the line too sharply between those classes and the class which indulges occasionally in extra-marital relations, to permit of a construction under the ejusdem generis rule that would exclude the latter class as immoral persons like prostitutes.

2. Another reason distinct from the ejusdem generis rule, for holding that appellant is not excludable as one seeking entry "for an immoral purpose," is that, fairly construed, the "immoral purpose" must be found to be the dominant, and not a merely incidental cause or purpose of her return.

As stated by Judge Hutcheson in sustaining the writ of habeas corpus in ex parte Rocha, 30 F. (2d) 823 (S. D. Texas, 1929), the only case cited or found in which this question was involved:

> "* * * the dominant and real facts in the case, * * * are not that he came into the United States for an immoral purpose, but that having gone across the river for an hour's visit, he returned to his home and his business for the purpose of pursuing the ordinary tenor of his life, and whether he did or did not have improper relations with the woman on his return is wholly immaterial, and cannot be found to be the cause or purpose of his return."

In that case there was evidence that the alien had indulged in intercourse with the woman (who had accompanied him on an hour's visit to Mexico) two

or three times a month during a period of eighteen months.

Here, appellant, resident in this country, visited her parents abroad as she had done in 1926; her companion on parts of the journey had attended a convention in Vienna. So far as the record shows, both were returning to this country "for the purpose of pursuing the ordinary tenor" of their lives. Appellant's uncontradicted testimony shows that prior to leaving the United States she had been regularly employed as a cook and domestic at a salary as high as $115. per month; there would seem to be no reason to doubt her testimony that she intended to resume such work or that the same employment agency which had previously placed her would, pursuant to its promise, find such work for her on her return. It seems to me entirely clear that reestablishing herself in what had become her home city, there again to work as a cook, was the real or dominant purpose of her return to this country and that an intention to have sexual relations with her companion until their arrival in Los Angeles or even after that time was a purpose purely incidental to her return. This is borne out by her testimony, evidently not disbelieved by the immigration officials, that

> "After I got back to Los Angeles I thought I would go where I would not see him as I used to. I might see him but that is all."

That the "immoral purpose" specified in the act shall be not an incidental but the dominant purpose

in coming to the United States, is a construction thereof which avoids imputing to Congress the improbable intent that deportation with its grave and permanent consequences shall follow merely because in returning to her residence, there to follow her legitimate and gainful occupation, the alien may have expected to indulge in extra-marital relations en route or occasionally thereafter. Even in the case of concubinage the Supreme Court has gone no further than to say, in the Bitty case, at page 403, that "the importation of an alien woman brought here only that she might live in a state of concubinage", was for an immoral purpose.

In my judgment, the order of the District Court should be reversed.

[Endorsed]: Opinion and Dissenting Opinion. Filed May 8, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 6921

INGER JULIAN HANSEN,

Appellant,

vs.

JOHN D. NAGLE, Commissioner of Immigration for the Port of San Francisco,

Appellee.

DECREE.

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Southern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Filed and entered May 8, 1933. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Mr. Stephen M. White counsel for the appellant, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including August 8, 1933; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

WM. H. SAWTELLE,
United States Circuit Judge.

Dated: San Francisco, California, June 27, 1933.

[Endorsed]: Filed Jun 27, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 6921

INGER JULIANE HANSEN,

Appellant,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,

Appellee.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-six (46) pages, numbered from and including 1 to and including 46, to be a full, true and correct copy of the entire record, excluding original exhibit, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 2d day of August A. D. 1933.

(Seal) PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4210)